

§ 190.213 Final order.

(a) After a hearing under § 190.211 or, if no hearing has been held, after expiration of the 30 day response period prescribed in § 190.209, the case file of an enforcement proceeding commenced under § 190.207 is forwarded to the Associate Administrator, OPS for issuance of a final order.

(b) The case file of an enforcement proceeding commenced under § 190.207 includes:

(1) The inspection reports and any other evidence of alleged violations;

(2) A copy of the notice of probable violation issued under § 190.207;

(3) Material submitted by the respondent in accord with § 190.209 in response to the notice of probable violation;

(4) The Regional Director's evaluation of response material submitted by the respondent and recommendation for final action to be taken under this section; and

(5) In cases involving a § 190.211 hearing, any material submitted during and after the hearing and the presiding official's recommendation for final action to be taken under this section.

(c) Based on a review of a case file described in paragraph (b) of this section, the Associate Administrator, OPS shall issue a final order that includes—

(1) A statement of findings and determinations on all material issues, including a determination as to whether each alleged violation has been proved;

(2) If a civil penalty is assessed, the amount of the penalty and the procedures for payment of the penalty, provided that the assessed civil penalty may not exceed the penalty proposed in the notice of probable violation; and

(3) If a compliance order is issued, a statement of the actions required to be taken by the respondent and the time by which such actions must be accomplished.

(d) Except as provided by § 190.215, an order issued under this section regarding an enforcement proceeding is considered final administrative action on that enforcement proceeding.

(e) It is the policy of the Associate Administrator, OPS to issue a final order under this section expeditiously. In cases where a substantial delay is expected, notice of that fact and the

date by which it is expected that action will be taken is provided to the respondent upon request and whenever practicable.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-6, 61 FR 18514, Apr. 26, 1996; 70 FR 11137, Mar. 8, 2005]

§ 190.215 Petitions for reconsideration.

(a) A respondent may petition the Associate Administrator, OPS for reconsideration of a final order issued under § 190.213. It is requested, but not required, that three copies be submitted. The petition must be received no later than 20 days after service of the final order upon the respondent. Petitions received after that time will not be considered. The petition must contain a brief statement of the complaint and an explanation as to why the effectiveness of the final order should be stayed.

(b) If the respondent requests the consideration of additional facts or arguments, the respondent must submit the reasons they were not presented prior to issuance of the final order.

(c) The Associate Administrator, OPS does not consider repetitious information, arguments, or petitions.

(d) The filing of a petition under this section stays the payment of any civil penalty assessed. However, unless the Associate Administrator, OPS otherwise provides, the order, including any required corrective action, is not stayed.

(e) The Associate Administrator, OPS may grant or deny, in whole or in part, any petition for reconsideration without further proceedings. In the event the Associate Administrator, OPS reconsiders a final order, a final decision on reconsideration may be issued without further proceedings, or, in the alternative, additional information, data, and comment may be requested by the Associate Administrator, OPS as deemed appropriate.

(f) It is the policy of the Associate Administrator, OPS to issue notice of the action taken on a petition for reconsideration expeditiously. In cases where a substantial delay is expected, notice of that fact and the date by which it is expected that action will be